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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,762	02/08/2001	Marcio Marc Abreu	P66081US1	4160
136 7590 09/15/2008 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004				
EXAMINER				
NAJARIAN, LENA				
ART UNIT		PAPER NUMBER		
3626				
MAIL DATE		DELIVERY MODE		
09/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/778,762

Applicant(s)

ABREU, MARCIO MARC

Examiner

LENA NAJARIAN

Art Unit

3626

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- 7) ☐ Paper No(s)/Mail Date: _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the Request for Continued Examination (RCE) filed 8/13/08. Claim 66 has been amended. Claims 68 and 69 have been cancelled. Claim 66 is pending.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/13/08 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fu et al. (4,803,625) in view of Madsen et al. (5,853,377), and further in view of Kapp (US 2001/0001144 A1).

(A) Referring to claim 66, Fu discloses a device for acquiring data comprising (abstract of Fu):

an input device for acquiring and transmitting biological data of an individual at different points in time over an extended time frame (col. 5, line 53 – col. 6, line 12 and col. 3, lines 23-27 of Fu);

a processor, said processor receiving the biological data of the individual from the input device (Fig. 2 and col. 5, line 53 – col. 6, line 12 of Fu); and

a memory connected to the processor and storing a program for controlling operation of the processor (abstract and Fig. 2 of Fu);

said processor being operative with the program in the memory to receive the biological data of the individual and to analyze the biological data, and said biological data being compared by the processor to constantly updated medical information transmitted to the processor to determine if the biological data received is of a predetermined degree of a life-threat to the individual, the processor providing a warning of the predetermined degree of threat to life determined by the comparison performed by the processor (Fig. 10-12, abstract, and col. 3, lines 46-62 of Fu);

the input device including a blood pressure measuring device (col. 7, lines 13-16 of Fu).

Fu does not expressly disclose a bi-directional communications link to the individual to send one of different levels of medical emergency warning to the individual by different communication devices, said biological data being compared by the processor to medicinal and other products used by the individual, said medicinal and other products used by the individual being compared by the processor to the constantly updated medical information to determine life-threats, the input device transmitting data to a distributed computer network, and said input device allowing entry of the medicinal and other products used by the individual for comparison by the processor against the biological data of the individual and the constantly updated medical information transmitted to the processor.

Madsen discloses a bi-directional communications link to the individual to send one of different levels of medical emergency warning to the individual by different communication devices (abstract, Fig. 1, and col. 4, lines 17-46 of Madsen).

Kapp discloses said biological data being compared by the processor to medicinal and other products used by the individual, said medicinal and other products used by the individual being compared by the processor to the constantly updated medical information to determine life-threats (para. 61 and para. 63 of Kapp), the input device transmitting data to a distributed computer network (para. 58 of Kapp), and said input device allowing entry of the medicinal and other products used by the individual for comparison by the processor against the biological data of the individual and the

constantly updated medical information transmitted to the processor (para. 12 and para. 61 of Kapp).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Madsen and Kapp within Fu. The motivation for doing so would have been for the patient to be immediately notified of the status of his health (abstract of Madsen) and to minimize clinical liability for adverse drug reactions (para. 12 of Kapp).

Insofar as the claim recites "one of," it is immaterial whether or not the other elements are also disclosed.

Response to Arguments

5. Applicant's arguments with respect to claim 66 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LENA NAJARIAN whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, C. Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/L. N./
Examiner, Art Unit 3626
In
9/4/08

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3626